

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs October 24, 2005

**PARRISH JONES v. JAMES M. DAVIS, WARDEN**

**Appeal from the Tennessee Claims Commission  
No. 20300262 Vance W. Cheek, Jr., Commissioner**

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**No. M2004-01522-COA-R3-CV - Filed April 19, 2006**

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A former inmate, Parrish Jones, appeals the dismissal by the Claims Commission of his claim for compensation against the Tennessee Department of Correction. He contends he was incarcerated beyond his lawful sentence for which the State is liable pursuant to Tenn. Code Ann. § 9-8-307(a)(1)(E) for negligent care, custody and control. While incarcerated in the state penitentiary, Jones contended he was being unlawfully detained as a consequence of an unlawful sentence. He filed a petition for declaratory relief with the Department of Correction pursuant to the Administrative Procedures Act. The Department timely responded to the petition, advising Jones it refused to issue a declaratory order on the basis it believed his sentence was legal, and dismissed his petition. Thereafter, and pursuant to a writ of habeas corpus filed by Jones, the Court of Criminal Appeals ruled the sentence was illegal and remanded for re-sentencing, after which Jones was released. Subsequently, Jones filed this claim with the Claims Commission, seeking compensation for the time he was unlawfully incarcerated. The Claims Commission dismissed Jones' claim, finding the Department of Correction's refusal to issue a declaratory order was not the result of negligence. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Tennessee Claims Commission  
Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and WILLIAM B. CAIN, J., joined.

Tracey Robinson-Coffee, Nashville, Tennessee, for the appellant, Parrish Jones.

Paul G. Summers, Attorney General and Reporter; Michael E. Moore, Solicitor General, and Mary M. Bers, Senior Counsel, for the appellee, State of Tennessee.

## OPINION

Jones pled guilty to three counts of armed robbery in September and October, 1989. The sentencing hearing on all three offenses was held on November 1, 1989. He was sentenced to twenty years on each of the three counts of armed robbery, the judgments for which were entered on November 2, 1989.<sup>1</sup> Jones' sentence, however, was erroneously calculated pursuant to the 1982 Sentencing Reform Act, (the 1982 Act), which was repealed effective November 1, 1989. The 1982 Act was superseded by the 1989 Sentencing Reform Act (the 1989 Act). Tenn. Code Ann. § 40-35-101 *et seq.* The 1989 Act, which became effective November 1, 1989, the day of Jones' sentencing hearing, specified that "[a]ny person sentenced on or after November 1, 1989, shall be sentenced under the provisions of this chapter." Tenn. Code Ann. § 40-35-117(b).

After serving three years in prison on the armed robbery sentences, Jones was released on parole in September 1992. He remained on parole until being arrested in March of 1998 for possession of a weapon by a felon. Jones pled guilty and was sentenced to two years for the new offense and two years for violation of probation, with the sentences to run consecutively.

While incarcerated for the parole violation and the new offense, Jones determined the 1989 sentence was illegal and, as a result, his parole should have expired prior to committing the 1998 offense.<sup>2</sup> As a consequence, he had not violated parole and the sentence he was presently serving should not have included the additional consecutive two-year sentence for violation of parole.

In order to obtain an early release, Jones filed an inmate grievance with the warden. When the grievance was denied, Jones filed a petition for declaratory relief pursuant to the Administrative Procedures Act with the Department of Correction in June 2000.<sup>3</sup> The Department denied his petition for declaratory relief in August 2000 based upon a letter authored by W. G. Lutche, an official within the Department. As the letter explained, the Department refused to issue a declaratory order based upon its conclusion that Jones was correctly sentenced in 1989. Jones filed an appeal of the Department's denial with the chancery court; however, that appeal was summarily dismissed because Jones had unpaid court costs from previous petitions. No further action was taken on the appeal.<sup>4</sup>

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<sup>1</sup> Jones' pled guilty on September 29, 1989, October 26, 1989 and October 29, 1989 to three separate offenses for armed robbery.

<sup>2</sup> After requesting a copy of his judgments from the Department of Correction, he confirmed he was sentenced on November 2, 1989 when the new 1989 Act was in effect; nevertheless, he was erroneously sentenced pursuant to the 1982 Act which required a longer sentence.

<sup>3</sup> Jones first filed a petition for declaratory relief in Davidson County Chancery Court. It was dismissed with the finding that Jones first must seek declaratory relief through the Department of Correction.

<sup>4</sup> Jones later testified before the Claims Commission that he did not pursue the appeal in chancery court, choosing instead to pursue the habeas corpus claim on appeal with the Court of Criminal Appeals.

Jones additionally filed a writ of habeas corpus in the Circuit Court of Wayne County, which was denied by the trial court. Jones appealed the trial court's denial of his habeas corpus petition. In October 2001, the Court of Criminal Appeals reversed the Wayne County Circuit Court, finding Jones' original 1989 armed robbery sentence illegal because he was sentenced under the sentencing guidelines of the 1982 Act rather than the 1989 Act. *See Jones v. Davis*, No. M2000-002252-CCA-R3-PC, 2001 WL 1251242 (Tenn. Crim. App. July 18, 2001). The error resulted in Jones receiving a substantially longer sentence than he should have received. The case was remanded to the circuit court following which Jones was re-sentenced to nine years, to be served at 30%. Based upon the corrected sentence, Jones should not have been on parole when he was arrested in 1998 for possession of a firearm. As a consequence, his 1998 conviction for violation of parole was vacated. By this time, Jones had satisfied the sentence and was immediately released.

Thereafter, Jones filed this claim against the Department of Correction pursuant to Tenn. Code Ann. § 9-8-307(a)(1)(E).<sup>5</sup> After a hearing on the matter the Claims Commission concluded the August 2000 letter issued by the Department was erroneous; however, it did not constitute negligence, and dismissed the claim. This appeal followed.

#### STANDARD OF REVIEW

Our review of decisions of individual claims commissioners and those of the Claims Commission are governed by the Tennessee Rules of Appellate Procedure. Tenn. Code Ann. § 9-8-403(a)(1). Decisions by the commission are reviewed pursuant to the standard of review for non-jury cases. Tenn. R. App. P. 13(d). With regard to factual questions, we review the record de novo, and presume the Claims Commission's findings of fact are correct unless the evidence preponderates otherwise. *Beare Co. v. State*, 814 S.W.2d 715, 717 (Tenn.1991); *Dobson v. State*, 23 S.W.3d 324, 328-29 (Tenn. Ct. App.1999); *Sanders v. State*, 783 S.W.2d 948, 951 (Tenn. Ct. App.1989). We, however, review questions of law de novo without a presumption of correctness. *Turner v. State*, No. W2004-02582-COA-R3-CV, 2005 WL 1541863, at \*3 (Tenn. Ct. App. June 3, 2005), perm. app. denied (Tenn. Oct. 24, 2005); *Crew One Prods., Inc. v. State*, 149 S.W.3d 89, 92 (Tenn. Ct. App. 2004); *Belcher v. State*, No. E2003-00642-COA-R3-CV, 2003 WL 22794479, at \*4 (Tenn. Ct. App. Nov.25, 2003).

#### ANALYSIS

It is undisputed that the 1989 sentence set in motion a series of events that resulted in Jones being incarcerated for a period of time beyond his lawful sentence. Although the initial error was in the 1989 sentence, the claim at issue does not challenge the illegal sentence. Jones alleges he was

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<sup>5</sup> Originally the complaint alleged Negligent Deprivation of Statutory Rights and a violation of appellant's constitutional rights. The claims commissioner dismissed the claim based on a lack of authority to grant relief under a claim of violation of constitutional rights and judicial immunity. Jones filed a motion to alter and amend his complaint to include a claim for negligent care, custody and control. This motion was granted.

detained unlawfully due to the Department's negligence for which he is entitled to compensation.<sup>6</sup> The Commission found the Department's reasoning for refusing to issue the declaratory order was wrong; however, it did not rise to the level of negligence. Finding no negligence, the Commission dismissed Jones' claim. We find no error with the Commission's ruling.

Jones' claim, which is based upon Tenn. Code Ann. § 9-8-307(a)(1)(E), asserts the Department was negligent in its care, custody and control of him while an inmate with the Department. When the State is accused of negligence under Tenn. Code Ann. § 9-8-307(a)(1)(E), its liability is based on the traditional tort concepts of duty and "the reasonably prudent person's standard of care." Tenn. Code Ann. § 9-8-307(c). Under Tennessee law, the plaintiff in a negligence action must prove each of the following elements: (1) a duty of care owed by the defendant to the plaintiff; (2) conduct of the defendant that fell below the applicable standard of care, amounting to a breach of the duty owed to the plaintiff; (3) an injury or loss sustained by the plaintiff; (4) causation in fact; and (5) proximate, or legal, causation. *Burroughs v. Magee*, 118 S.W.3d 323, 327-28 (Tenn. 2003) (citing *Staples v. CBL & Associates*, 15 S.W.3d 83, 89 (Tenn. 2000); *White v. Lawrence*, 975 S.W.2d 525, 529 (Tenn.1998)).

The Department's authority to hear petitions for declaratory relief arises from the Uniform Administrative Procedures Act, specifically Tenn. Code Ann. § 4-5-224. In pertinent part it reads:

Any affected person may petition an agency for a declaratory order as to the validity or applicability of a statute, rule or order within the primary jurisdiction of the agency. The agency shall:

(1) Convene a contested case hearing pursuant to the provisions of this chapter and issue a declaratory order, which shall be subject to review in the chancery court of Davidson County, unless otherwise specifically provided by statute, in the manner provided for the review of decisions in contested cases; or

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<sup>6</sup>In its order dated August 13, 2003, granting Jones' motion to alter or amend his complaint, the Commission stated:

And this Commission finds that the complaint in this claim alleges non-judicial acts by the Correction Department in its negligently confining the claimant pursuant to an illegal sentence, so that the judicial nature of its August 2000 letter is not determinative. In other words, even though T.C.A. § 9-8-30(a)(1)(N) does not apply to this claim, and even though the August 2000 letter is immune from liability because it is a judicial act, yet still this claim is not subject to a motion to dismiss because the complaint appears to allege both a claim under T.C.A. § 9-8-307(a)(1)(N) and also non-judicial negligent acts apart from the judicially immune August 2000 letter.

(2) Refuse to issue a declaratory order, in which event the person petitioning the agency for a declaratory order may apply for a declaratory judgment as provided in § 4-5-225.<sup>7</sup>

Tenn. Code Ann. § 4-5-224(a).

Once Jones filed the petition for declaratory relief, the Department had the statutory option to either issue a declaratory order or refuse to issue a declaratory order. *See* Tenn. Code Ann. § 4-5-224. The Department responded timely to Jones' petition, advising Jones the Department refused to issue a declaratory order. The Department's response was set forth in a letter authored by Legal Assistant, W. G. Lutche dated August 31, 2000. The refusal to issue a declaratory order and subsequent dismissal of the petition fulfilled the Department's duty under Tenn. Code Ann. § 4-5-224. Moreover, the Department's refusal to issue a declaratory order did not deprive Jones of a legal right or remedy. To the contrary, Tenn. Code Ann. § 4-5-225 afforded Jones the right to file a petition for declaratory judgment with the Chancery Court once the Department refused to issue a declaratory order and dismissed the petition. Additionally, Jones had the right, which he exercised, to file a writ of habeas corpus.

Jones' claims is pursuant to Tenn. Code Ann. § 9-8-307(a)(1)(E) for which negligence is an essential element. It is undisputed that the Department's reasons for refusing to issue a declaratory order, as set forth in the Lutche letter, were incorrect; however, that fact, standing alone, does not prove the Department was negligent. To prove negligence, Jones had to prove the Department's conduct fell below the applicable standard of care, that of "the reasonably prudent person." Tenn. Code Ann. § 9-8-307(c). The record is devoid of evidence that Mr. Lutche, who authored the letter, or the Department failed to satisfy the reasonable prudent person standard of care.<sup>8</sup> Consequently, Jones failed to establish the Department's conduct fell below the applicable standard of care.

The judgment of the Tennessee Claims Commission is affirmed and this matter is remanded with costs of appeal assessed against Appellant, Parrish Jones.

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FRANK G. CLEMENT, JR., JUDGE

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<sup>7</sup> Tenn. Code Ann. § 4-5-225 provides for petitions for declaratory judgments to be filed with the Chancery Court if the claimant has petitioned the agency and the agency has refused to issue a declaratory order.

<sup>8</sup> To sustain a claim for negligence, Jones had the burden to prove the Department violated each of the five elements recited above, one of which is the Department's conduct fell below the applicable standard of care. *See Burroughs v. Magee*, 118 S.W.3d 323, 327-28 (Tenn. 2005); *Staples v. CBL & Assoc.*, 15 S.W.3d 83, 89 (Tenn. 2000); *White v. Lawrence*, 975 S.W.2d 525, 529 (Tenn. 1998).